

§ 1.169-1

26 CFR Ch. I (4-1-03 Edition)

such facility (see § 1.168A-5) as of the end of such month (computed without regard to any amortization deduction for such month). The election referred to in this paragraph shall be made in the return for the taxable year in which the amount of such payment is includible in gross income.

(b) If a taxpayer is recovering the adjusted basis of an emergency facility through depreciation rather than amortization, the depreciation deduction allowable under section 167 for the month in which the amount of any such payment is includible in gross income shall, at the taxpayer's election, be increased by such amount; but the total deduction with respect to the certified portion of such facility shall not in any case exceed the adjusted basis of such facility (computed as provided in section 168(e) and § 1.168A-5 for amortization purposes) as of the end of such month (computed without regard to any amount allowable for such month under section 167 or 168(g)(2)). The election referred to in this paragraph shall be made in the return for the taxable year in which the amount of such payment is includible in gross income.

(c) This section may be illustrated by the following examples:

Example (1). On January 31, 1954, the X Corporation purchases an emergency facility at a cost of \$600,000. The certificate covers the entire acquisition. The X Corporation elects to take amortization deductions with respect to such facility and to begin the 60-month amortization period with February 1954, the month following the month of acquisition. On July 15, 1955, as a result of the cancellation of certain contracts with the X Corporation, the United States makes a payment of \$300,000 to the corporation as compensation for the unamortized cost of such facility. The \$300,000 payment is includible in the X Corporation's gross income for July 1955. The adjusted basis of such facility for amortization purposes as of the end of July 1955, computed without regard to any amortization deduction for such month, is \$430,000. Accordingly, the corporation is entitled to take an amortization deduction of \$300,000 for such month, in lieu of the \$10,000 amortization deduction which is otherwise allowable.

Example (2). On November 30, 1954, the Y Corporation purchases an emergency facility, consisting of land with a building thereon, at a cost of \$500,000, of which \$200,000 is allocable to the land and \$300,000 to the building. The certificate covers the entire acquisition. The Y Corporation does not

elect to take amortization deductions with respect to such facility, but is entitled to a depreciation deduction with respect to the building at the rate of 3 percent per annum, or \$750 per month. On August 12, 1956, as a result of cancellation of certain contracts, the United States makes a payment of \$400,000 to the corporation as compensation for the unrecovered cost of such facility. The \$400,000 is includible in the Y Corporation's gross income for August 1956. The adjusted basis of the facility as of the end of August 1956, computed without regard to depreciation for such month, is \$485,000, of which amount \$200,000 is allocable to the land and \$285,000 to the building. Accordingly, the corporation is entitled to increase the \$750 depreciation deduction for August 1956 by the full amount of the \$400,000 payment.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960. Redesignated and amended by T.D. 8116, 51 FR 46619, Dec. 24, 1986]

§ 1.169-1 Amortization of pollution control facilities.

(a) *Allowance of deduction*—(1) *In general.* Under section 169(a), every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis (as defined in § 1.169-3) of any certified pollution control facility (as defined in § 1.169-2), based on a period of 60 months. Under section 169(b) and paragraph (a) of § 1.169-4, the taxpayer may further elect to begin such 60-month period either with the month following the month in which the facility is completed or acquired or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired. Under section 169(c), a taxpayer who has elected under section 169(b) to take the amortization deduction provided by section 169(a) may, at any time after making such election and prior to the expiration of the 60-month amortization period, elect to discontinue the amortization deduction for the remainder of the 60-month period in the manner prescribed in paragraph (b)(1) of § 1.169-4. In addition, if on or before May 18, 1971, an election under section 169(a) has been made, consent is hereby given to revoke such election without the consent of the Commissioner in the manner prescribed in (b)(2) of § 1.169-4.

(2) *Amount of deduction.* With respect to each month of such 60-month period which falls within the taxable year, the

amortization deduction shall be an amount equal to the amortizable basis of the certified pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in such 60-month period. The amortizable basis at the end of any month shall be computed without regard to the amortization deduction for such month. The total amortization deduction with respect to a certified pollution control facility for a taxable year is the sum of the amortization deductions allowable for each month of the 60-month period which falls within such taxable year. If a certified pollution control facility is sold or exchanged or otherwise disposed of during 1 month, the amortization deduction (if any) allowable to the original holder in respect of such month shall be that portion of the amount to which such person would be entitled for a full month which the number of days in such month during which the facility was held by such person bears to the total number of days in such month.

(3) *Effect on other deductions.* (i) The amortization deduction provided by section 169 with respect to any month shall be in lieu of the depreciation deduction which would otherwise be allowable under section 167 or a deduction in lieu of depreciation which would otherwise be allowable under paragraph (b) of § 1.162-11 for such month.

(ii) If the adjusted basis of such facility as computed under section 1011 for purposes other than the amortization deduction provided by section 169 is in excess of the amortizable basis, as computed under § 1.169-3, such excess shall be recovered through depreciation deductions under the rules of section 167. See section 169(g).

(iii) See section 179 and paragraph (e)(1)(ii) of § 1.179-1 and paragraph (b)(2) of § 1.169-3 for additional first-year depreciation in respect of a certified pollution control facility.

(4) [Reserved]

(5) *Special rules.* (i) In the case of a certified pollution control facility held by one person for life with the remainder to another person, the amortization deduction under section 169(a)

shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant during his life.

(ii) If the assets of a corporation which has elected to take the amortization deduction under section 169(a) are acquired by another corporation in a transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies, the acquiring corporation is to be treated as if it were the distributor or transferor corporation for purposes of this section.

(iii) For the right of estates and trusts to amortize pollution control facilities see section 642(f) and § 1.642(f)-1. For the allowance of the amortization deduction in the case of pollution control facilities of partnerships, see section 703 and § 1.703-1.

(6) *Depreciation subsequent to discontinuance or in the case of revocation of amortization.* A taxpayer which elects in the manner prescribed under paragraph (b) (1) of § 1.169-4 to discontinue amortization deductions or under paragraph (b) (2) of § 1.169-4 to revoke an election under section 169(a) with respect to a certified pollution control facility is entitled, if such facility is of a character subject to the allowance for depreciation provided in section 167, to a deduction for depreciation (to the extent allowable) with respect to such facility. In the case of an election to discontinue an amortization deduction, the deduction for depreciation shall begin with the first month as to which such amortization deduction is not applicable and shall be computed on the adjusted basis of the property as of the beginning of such month (see section 1011 and the regulations thereunder). Such depreciation deduction shall be based upon the remaining portion of the period authorized under section 167 for the facility as determined, as of the first day of the first month as of which the amortization deduction is not applicable. If the taxpayer so elects to discontinue the amortization deduction under section 169(a), such taxpayer shall not be entitled to any further amortization deduction under this section and section 169(a) with respect to such pollution control facility. In the case of a revocation of an election under

§ 1.169-2

26 CFR Ch. I (4-1-03 Edition)

section 169(a), the deduction for depreciation shall begin as of the time such depreciation deduction would have been taken but for the election under section 169(a). See paragraph (b)(2) of § 1.169-4 for rules as to filing amended returns for years for which amortization deductions have been taken.

(7) *Definitions.* Except as otherwise provided in § 1.169-2, all terms used in section 169 and the regulations thereunder shall have the meaning provided by this section and §§ 1.169-2 through 1.169-4.

(b) *Examples.* This section may be illustrated by the following examples:

Example (1). On September 30, 1970, the X Corporation, which uses the calendar year as its taxable year, completes the installation of a facility all of which qualifies as a certified pollution control facility within the meaning of paragraph (a) of § 1.169-2. The cost of the facility is \$120,000 and the period referred to in paragraph (a)(6) of § 1.169-2 is 10 years in accordance with the rules set forth in paragraph (a) of § 1.169-4, on its income tax return filed for 1970, X elects to take amortization deductions under section 169(a) with respect to the facility and to begin the 60-month amortization period with October 1970, the month following the month in which it was completed. The amortizable basis at the end of October 1970 (determined without regard to the amortization deduction under section 169(a) for that month) is \$120,000. The allowable amortization deduction with respect to such facility for the taxable year 1970 is \$6,000, computed as follows:

Monthly amortization deductions:	
October: \$120,000 divided by 60	\$2,000
November: \$118,000 (that is, \$120,000 minus \$2,000) divided by 59	2,000
December: \$116,000 (that is, \$118,000 minus \$2,000) divided by 58	2,000
Total amortization deduction for 1970	6,000

Example (2). Assume the same facts as in example (1). Assume further that on May 20, 1972, X properly files notice of its election to discontinue the amortization deductions with the month of June 1972. The adjusted basis of the facility as of June 1, 1972, is \$80,000, computed as follows:

Yearly amortization deductions:	
1970 (as computed in example (1))	\$6,000
1971 (computed in accordance with example (1))	24,000
1972 (for the first 5 months of 1972 computed in accordance with example (1))	10,000
Total amortization deductions for 20 months	40,000
Adjusted basis as beginning of amortization period	120,000
Less: Amortization deductions	40,000

Adjusted basis as of June 1, 1972	80,000
---	--------

Beginning as of June 1, 1972, the deduction for depreciation under section 167 is allowable with respect to the property on its adjusted basis of \$80,000.

[T.D. 7116, 36 FR 9012, May 18, 1971; 36 FR 9770, May 28, 1971, as amended by T.D. 7203, 37 FR 17133, Aug. 25, 1972]

§ 1.169-2 Definitions.

(a) *Certified pollution control facility—*
(1) *In general.* Under section 169 (d), the term “certified pollution control facility” means a facility which—

(i) The Federal certifying authority certifies, in accordance with the rules prescribed in paragraph (c) of this section, is a “treatment facility” described in subparagraph (2) of this paragraph, and

(ii) Is “a new identifiable facility” (as defined in paragraph (b) of this section).

For profitmaking abatement works limitation, see paragraph (d) of this section.

(2) *Treatment facility.* For purposes of subparagraph (1)(i) of this paragraph, a “treatment facility” is a facility which (i) is used to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing of pollutants, contaminants, wastes, or heat and (ii) is used in connection with a plant or other property in operation before January 1, 1969. Determinations under subdivision (i) of this subparagraph shall be made solely by the Federal certifying authority. See subparagraph (3) of this paragraph. For meaning of the phrases “plant or other property” and “in operation before January 1, 1969,” see subparagraphs (4) and (5), respectively, of this paragraph.

(3) *Facilities performing multiple functions or used in connection with several plants, etc.* (i) If a facility is designed to perform or does perform a function in addition to abating or controlling water or atmospheric pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, such facility shall be a treatment facility only with respect to that part of the cost thereof